

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

- against -

Adv. Pro. No. 08-01789-BRL

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

SIPA Liquidation

Defendant.
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**OBJECTION TO SIPA TRUSTEE'S DETERMINATION
OF CLAIM NUMBER 000386**

The Claimant, ARTICLE FOURTH TRUST U/W MARTIN J. JOEL, JR., DECEASED (hereinafter referred to as the "Claimant"), by its attorneys, Snow Becker Krauss P.C., hereby objects to and opposes the Notice of Trustee's Determination of Claim dated April 27, 2010 (hereinafter referred to as the "Determination") issued by Irving H. Picard, Trustee under the Securities Investor Protection Act (hereinafter referred to as the "SIPA Trustee"), upon the following grounds:

1. According to the records of the Claimant, the Claimant's allowable claim on Bernard L. Madoff Investment Securities LLC Account No. J0057-3 and J0057-4 (which has been designated as Claim Number 000386) computed on the "money in, money out" analysis being utilized by the SIPA Trustee (i.e., the SIPA Trustee's Net Investment Method) should be in the sum of not less than \$7,553,688.65, rather than the

negative "Adjusted Amount" balance of (\$7,402,684.59) reflected under the SIPA Trustee's Determination.¹

2. The aforesaid positive net equity credit balance of \$7,553,688.65 is computed by adding the initial deposit of securities having a value in the sum of \$14,956,373.24 to the "Adjusted Amount" of the schedule of "Deposits" set forth in the Trustee's Notice of Determination of Claim, which results in total "Deposits" in the sum of \$18,497,258.69, and deducting therefrom the "Adjusted Amount" of the schedule of "Withdrawals" set forth in the Trustee's Notice of Determination of Claim in the sum of \$10,943,570.04, thereby resulting in the positive net equity credit balance in the sum of \$7,553,688.65 under the "money in, money out" Net Investment Method currently being utilized by the Trustee to determine customer claims in the SIPA liquidation of Bernard L. Madoff Investment Securities LLC.
3. The Claimant predicates its SIPA claim herein upon the contention that up until on or about the time of his death on May 6, 2003, Martin J. Joel, Jr., Deceased (the "Decedent"), under whose Last Will and Testament the Claimant was created, was a trader employed by Bernard L. Madoff Investment Securities LLC on the 18th floor of the office building in which the business premises of Bernard L. Madoff Investment Securities LLC was located, and throughout the Decedent's lifetime he personally (a) handled the various accounts that he maintained at Bernard L. Madoff

¹ The allowable claim asserted by Claimant herein is based upon the SIPA Trustee's Net Investment Method (i.e., "money in, money out") for determining the net equity in the accounts of customers of Bernard L. Madoff Investment Securities LLC, and is subject to the Claimant's right to have its claim re-determined in accordance with any final and unappealable court order that reverses or modifies the Bankruptcy Court's Decision dated March 1, 2010.

Investment Securities LLC for himself and for entities that he owned and controlled, and (b) executed the trades of the securities in those accounts. Those accounts were not “managed” by Bernard L. Madoff as a part of the “Ponzi scheme” that he operated out of the 17th floor of the business premises occupied by Bernard L. Madoff Investment Securities LLC until after the Decedent's death, after which Bernard L. Madoff became one of the Executors of the Decedent's estate and one of the Trustees of the two Trusts created under the Decedent's Last Will and Testament, one of which such Trusts is the Claimant.

4. Accordingly, it is the Claimant's contention that real securities transferred from the accounts that were managed by the Decedent personally during his lifetime are the source of the opening balance of \$14,956,373.24 in securities with which the Claimant's Account No. J0057-3 and J0057-4 was opened, and that therefore the Trustee is in error in adjusting that opening balance to zero.
5. In support of the Claimant's Objection to the SIPA Trustee's Determination of Claim Number 000386, annexed hereto are copies of the following documents:
 - A. Exhibit A - Memorandum dated May 8, 1996 from Harvey Krauss, Esq. of Snow Becker Krauss P.C. to Sam Silvers, Esq. of that law firm regarding the formation of a partnership for the Decedent and his wife (now widow) Sylvia Joel, the sole business operations of which “will be Martin's personal investment trading activities.”
 - B. Exhibit B - The Martin J. Joel Partnership General Partnership Agreement executed as of May 20, 1996, reflecting that the purpose of the Partnership was to “engage in the business of the purchase for investment and sale of

stocks, bonds, notes, securities, commodities, future contracts with respect to any commodity, selling such investments both long and short, and any purchase for investment purposes as the Manager of the Partnership (as defined in Article V below) shall determine.” Article V of that Partnership Agreement provided that: “The business of the Partnership shall be under the exclusive management of Martin J. Joel as the Manager of the Partnership.”

- C. Exhibit C - Business Certificate for Partners of The Martin J. Joel Partnership executed the 20th day of May, 1996 by Martin J. Joel and Sylvia Ann Joel.
- D. Exhibit D - Portfolio Management Reports as of 3/31/99, 6/30/99, 9/30/99 and 12/31/99 for The Martin J. Joel Partnership Account No. 1-J0029-3 and 1-J0029-7, with handwritten notes of the Decedent set forth thereon.
- E. Exhibit E - Form 1065-U.S. Return of Partnership Income for The Martin J. Joel Partnership for calendar year 2002, that being the year prior to the year in which the Decedent passed away.
- F. Exhibit F - Martin J. Joel Partnership Statement of Account for Account Number 1-J0029-3-0 at Bernard L. Madoff Investment Securities LLC for the period ending 5/31/03, that being the month in which the Decedent passed away.
- G. Exhibit G - Martin J. Joel Partnership Statement of Account for Account Number 1-J0029-7-0 at Bernard L. Madoff Investment Securities LLC for

the period ending 5/31/03, that being the month in which the Decedent passed away.

H. Exhibit H - Martin J. Joel Partnership Statement of Account for Account Number 1-J0029-8-0 at Bernard L. Madoff Investment Securities LLC for the period ending 5/31/03, that being the month in which the Decedent passed away.

I. Exhibit I - Estate of Martin J. Joel, Jr. Statement of Account for Account Number 1-J0056-3-0 at Bernard L. Madoff Investment Securities LLC for the period ending 9/30/03 and duplicate of that Statement of Account, that being the month during which said account was opened. As reflected on said Statement of Account, that account for the Decedent's estate was opened on September 3, 2003 with a transfer having a value of \$18,022,963.46 from Account No. 1-J0029-3-0 of The Martin J. Joel Partnership, which had been managed by the Decedent personally up until on or about the time of his death on May 6, 2003.

J. Exhibit J - Article Fourth Trust U/W of Martin J. Joel, Jr. Statement of Account for Account No. 1-J0057-3-0 at Bernard L. Madoff Investment Securities LLC for the period ending 1/31/04 and duplicate of that Statement of Account, that being the month during which said account was opened. As reflected on said Statement of Account, that account for the Claimant was opened on January 2, 2004 with a transfer in the sum of \$14,956,373.24 from Account No. 1-J0056-3-0 of the Estate of Martin J. Joel, Jr. As is set forth above, Account No. 1-J0056-3-0 of the Estate of Martin J. Joel, Jr. had

been opened with a transfer in the sum of \$18,022,963.46 from Account No. 1-J0029-3-0 of The Martin J. Joel Partnership, which is one of the accounts that had been managed personally by the Decedent up until on or about the time that he passed away on May 6, 2003.

K. Exhibit K - Estate of Martin J. Joel, Jr. Statement of Account for Account No. 1-J0056-3-0 at Bernard L. Madoff Investment Securities LLC for the period ending 1/31/04, reflecting the transfer in the sum of \$14,956,373.24 from that account to Account No. 1-J0057-3-0 on January 2, 2004, that being the transfer with which the account of the Claimant was opened.

6. The foregoing documents annexed as Exhibits hereto are not necessarily exhaustive of all of the documents that tend to support the Claimant's claim herein, and the Claimant hereby expressly reserves the right to produce any and all additional documents that may be in its possession, custody or control tending to support Claim Number 000386. The Claimant further expressly reserves the right to rely upon any and all documents that may be in the possession, custody or control of the Trustee that lend support to the legitimacy of Claim Number 000386.

Dated: New York, New York
May 24, 2010

SNOW BECKER KRAUSS P.C.
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By: 

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